

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Committee:		Kaua'i Police Commission	Meeting Date	July 28, 2017
Location	Mo'ikeha Building – Meeting Room 2A/B		Start of Meeting: 9:00 a.m.	End of Meeting: 10:38 a.m.
Present	Chair Mary K. Hertog; Vice-Chair Gerald (Chip) Bahouth; Members: Savita Agarwal, Roy Morita, Kevin Mince and Donald (Moki) Okami Sr. Also present: Board & Commissions Office Staff: Support Clerk Mercedes Omo; Administrator Paula Morikami; Office of the County Attorney: Deputy County Attorney Peter Morimoto; Police Department: Chief Darryl Perry, Assistant Chief Robert Gausephol, Captain Paul Applegate; Lieutenant Jon Takamura and Lieutenant James Miller;			
Excused	Commissioner Catherine Adams			
Absent				

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Hertog called the meeting to order at 9:00 a.m. with six (6) members present constituting a quorum.
Chair's Comments	<p>Chair Hertog congratulated the six (6) new police officers who just recently graduated and thanked Lt. Todd Tanaka for providing the training for the officers. Vice Chair Bahouth shared what he had the opportunity to do a ride-a-long in the different districts where he gained a lot of knowledge relative to the operational side of the Police Department.</p> <p>Chair Hertog shared that she attended a refresher training class that was put on by County Attorney Mauna Kea Trask and Boards and Commissions Administrator Paula Morikami. One of topic of interest that was brought to her attention is the importance of updating your financial disclosures if there is a change in your income level.</p> <p>With no comments, Chair Hertog asked Mr. Morimoto to provide clarification as it relates to contested hearing in executive session versus open session.</p> <p>Mr. Morimoto explained that Section 91-1 of the Hawai'i Revised Statutes states that contested case is a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing. For example, the Planning Commission is the body who approves all zoning permits and if the applicant wanted to build a</p>	

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	<p>certain type of structure on a piece of property and the Planning Commission denies the applicant it becomes a contested case hearing where the party would present their position to the Planning Commission. Relative to the Police Commission, an officer seeking legal representation would come before the Commission (which is their right and privilege) and if their request is denied per the Commission's rules the officer may petition for a formal hearing.</p> <p>Mr. Morita asked what happens if the request for legal representation is denied, does the officer have the right to have the hearing in executive session or in open session. Mr. Morimoto stated that he's is in process of doing the research, but if he wanted to, he could call him and he'll give him what he had uncovered so far because he would rather have that discussion in private.</p> <p>Mr. Mince noted for Mr. Morita's edification the information he's seeking is in the Police Commission's rules.</p> <p>Lastly, Chair Hertog announced that the Chief's Annual Performance Evaluation is due at the end of September and that she asked Ms. Omo to email the new evaluation form to each Commissioner. She added if possible, she would like the Commissioners to submit their comments before the end of September.</p>	
Approval of Minutes	Regular Open Session Minutes of June 30, 2017.	Vice Chair Bahouth moved to approve the meeting minutes. Mr. Okami seconded the motion. The motion carried 6:0
Chief's Monthly Reports	<ol style="list-style-type: none"> 1. Administrative and Technical Bureau 2. Investigative Services Bureau 3. Traffic and Patrol Services Bureau <p>Chief Perry asked for more clarification on the Commission's rules as it relates to having a contested hearing in closed session or open session. Chair Hertog pointed out that the matter is addressed under Rule 7-6 (l) of the Police Commission's rules, which states a contested case hearing shall be held in closed session, unless all parties to the proceedings choose to have the hearing in open session. However, any privileged dialogue between the</p>	

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	<p>Commission and the County Attorney advising the Commission shall be held in executive session.</p> <p>Mr. Mince added that relative to the Honolulu Police Commission their rules does not differentiate between just an informal hearing and a contested hearing and does not address closed or open sessions at all. Chair Hertog noted that being consistent in at least some of the Commission's definitions is something she hopes can be discussed with the other Police Commissions because it's kind of confusing.</p> <p>4. <u>Chief's Announcements and Pertinent Updates</u></p> <p>Chief Perry reported the department is working with the Department of Education to address what the vulnerabilities are in the schools when it comes to an active shooter. Plans are moving ahead to begin construction of the new substation in the Kawaihau district in the next three (3) years. Lastly, his meeting with Big Brothers and Big Sister is set for August 9, 2017.</p> <p>Mr. Morita asked when an officer retires and he or she is diagnosed with job related PTSD, does the County provide on-going services for the officer to help them cope with PTSD to which Chief Perry replied, it would be considered work place injury and covered only if the officer submits a work comp claim which has to be approved prior. The problem is major of the officers who retire does not know whether or not they have PTSD. Ms. Agarwal suggested having the officer go through detox program as a preventive measure before and after they retire. Lastly, Chief Perry congratulated Lt. Roderick Green for being selected to attend the National FBI Academy.</p>	
KPC 2017-10	<p>Discussion and decision-making on selecting three (3) Commissioners to attend the 64th Annual Hawai'i State Law Enforcement Officials Association Conference from September 21 to 22, 2017 at the Sheraton Waikiki Hotel on O'ahu.</p>	

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	Chair Hertog stated that September 22 is the same day the Police Commission is set to meet therefore, she would like to call for a motion to move the September meeting to Friday, September 29, 2017. She noted whoever is interested in attending the conference to let her know as soon as possible because only three (3) can attend.	Mr. Morita moved to have the Commission's September 22 nd meeting to Friday, September 29 th . Mr. Mince seconded the motion. The motion carried 6:0.
Announcements	Next regular monthly meeting - Friday, August 25, 2017, 9:00 a.m. at the Mo`ikeha Building, Meeting Room 2A/2B. Executive Session to follow.	
Executive Session	At 9:22 a.m. Vice Chair Bahouth cited the following Hawai'i Revised Statutes to bring the meeting into Executive Session. Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Commission to review and discuss charges brought against an officer or employee of the County, where consideration of matters affecting privacy will be involved, provided that if the individual concerned requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues pertaining to the Commission's and the County's powers, duties, privileges, immunities, and/or liabilities as they may relate to the following agenda items:	
ES KPC 2017-005	Monthly update by Chief Perry on the status of the Department's disposition on formal notarized complaints that were filed with the Police Commission and forwarded to the Office of the Chief for further review	
ES KPC 2017-006	Monthly update by Chief Perry on any significant adverse incidents/events involving KPD personnel that could potentially impact the County, Commission and the Kaua'i Police Department.	
ES KPC 2017-014	Pursuant to Hawai'i Revised Statutes §92-4 and §92-5 (a) and (4), the purpose of this Executive Session is to discuss the County of Kaua'i Grievances and Complaints Policy for Department Heads that can be removed by the County Boards and Commissions. This consultation involves consideration of powers, duties, privileges, immunities and/or liabilities of the Kaua'i Police Commission as they may relate to this agenda item. (On-going)	

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ES KPC 2017-016	Notarized Complaint KPC 2017-003 received on April 21, 2017. The complaint alleges unethical use of county resources to participate in a private funeral motorcade. (On-going)	
ES KPC 2017-022	New notarized complaint no. KPC 2017-005 filed on June 30, 2017. The complaint alleges that on May 24, 2016, the Detective who was assigned to the case failed to properly process and follow through with the complainant's report of a forgery and did not take into account the evidence that was provide to the Detective	
ES KPC 2017-023	Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (4), §92-9 (a) (1-4) and (b), the purpose of this Executive Session is for the Commission to approve the Executive Session meeting minutes of June 30, 2017, and to consult with its attorney on issues pertaining to the Commission's powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item.	Mr. Okami moved to enter into Executive Session. Mr. Morita seconded the motion. The motion carried 6:0. At 9:25 a.m. the Commissioners entered into Executive Session.
Return to Open Session to ratify the actions taken in Executive Session	At 10:38 a.m. the Commissioners reconvened in Open Session. Chair Hertog called for a motion to ratify the actions taken in Executive Session.	Ms. Agarwal moved to ratify the actions taken in Executive Session for the following items: <u>ES KPC 2017-005:</u> <u>Motion no. 1</u> Motion carried 6:0 to receive the Chief's monthly reports. <u>Motion no. 2</u> Motion carried 6:0 to receive a communication dated July 3, 2017 from Chief Perry to Chair Hertog as it relates to the final disposition for notarized complaint KPC 2017-01, also known as KPC ADM 17-0039.

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		<p><u>Motion no. 3</u> Motion carried 6:0 to receive a communication dated July 27, 2017 from Chief Perry to Chair Hertog as it relates to notarized complaint KPC 2017-004.</p> <p><u>ES KPC 2017-006:</u> Verbal reported received.</p> <p><u>ES KPC 2017-014:</u> Motion carried 6:0 to defer the matter to the Commission's next meeting in August.</p> <p><u>ES KPC 2017-016:</u> <u>Motion no. 1</u> Motion carried 6:0 to accept the Board of Ethics findings with the stipulation that the Chair and Vice Chair meet with Chief Perry to review the findings of the Board of Ethics and include an opinion that the matter should have been handled better so there would no question on his authority; and ask the Chief to revisit the General Orders to alleviate any future challenges in this area.</p>

SUBJECT	DISCUSSION	ACTION
		<p><u>Motion No. 2</u> Motion carried 6:0 to defer the matter relating to allegation no. 4 for continued discussion at the Commission's next meeting in August.</p> <p><u>ES KPC 2017-022:</u> <u>Motion no.1</u> Motion carried 6:0 to receive the complaint for purposes of discussion. Motion carried 6:0.</p> <p><u>Motion no.2</u> A motion was made to not accept the complaint and refer it to the Office of the Chief for review. The motion was withdrawn and seconded.</p> <p><u>Motion no. 3</u> Motion carried 6:0 to deny accepting the complaint because it was filed in an untimely manner and outside of the Commission's timeframe to consider the complaint.</p>

SUBJECT	DISCUSSION	ACTION
		<u>ES KPC 2017-023:</u> Motion carried 6:0 to approve the Executive Session Meeting Minutes of June 30, 2017.
Adjournment		Mr. Okami moved to adjourn the meeting. Ms. Agarwal seconded the motion. The motion carried 6:0. At 10:38 a.m. the meeting adjourned.

Submitted by: _____
Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: _____
Mary K. Hertog, Chair

(x) Approved as circulated on August 25, 2017

() Approved as amended. See minutes of _____ meeting.